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REMARKS

Generally

The Examiner has indicated that claims 12-23 are pending in the application; that claims 12, 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention; that claims 12-16, 20-21, and 7-8 [sic] are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Mellott; that claims 1, 4-5 [sic] are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Petty or Preissler; that claims 12, 14, 21-22 are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Dubinsky; that claim 19 is rejected under 35 U.S.C. 103(a) as unpatentable over Mellott; and that claim 23 is rejected under 35 U.S.C. 103(a) as unpatentable over Dubinsky in view of Feldman. Applicant, by this Amendment, cancels the rejected claims, and submits new claims 24-33, in accordance with the Examiner's indications.

Response to Rejections Based on 35 U.S.C. 112, second paragraph

The Examiner has indicated that claims 12-23 are pending in the application; that claims 12, 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, the limitation "means for erecting the dome structures in courses utilizing an overhead hoist" is indefinite because it is unclear whether applicant is trying to claim "the means" or "the means with the dorm [sic] structures and the hoist."

Applicant has cancelled the claims at issue and has excluded the indefinite language from all newly submitted claims. Accordingly, it is respectfully submitted that the rejection based on 35 U.S.C. 112 is now moot.

Response to Rejections Based on 35 U.S.C. § 102(b)

The Examiner has indicated that claims 12-23 are pending in the application and that claims 12-16, 20-21, and 7-8 [sic] are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Mellott; that claims 1, 4-5 [sic] are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Petty or Preissler; and that claims 12, 14, 21-22 are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Dubinsky.

It is understood that only claims 12-23 are pending in the application. Accordingly, reference to claims 1, 4-5, and 7-8 are understood to be references to counterparts in the new claims, namely 12, 16-17, and 18-19.

Section 102(b) provides that "a person shall be entitled to a patent unless the invention was patented or described in a printed publication ... more than one year prior to the date of the application." 35 U.S.C. §102(b) (2000). Accordingly, a rejection based on anticipation requires that the "four corners" of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See *Atlas Powder Co. v. Ireco, Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). The specification of a patent must do more than merely indicate that the disclosed device may be used to perform another function. See *Straussler v. United States*, 339 F.2d 670, 671 (Ct. Cl. 1964). The prior art reference must be enabling, thus placing the claimed invention in the possession of the public. See *Akzo N.V. v. United States Int'l Trade Comm'n*, 808 F.2d 1471, 1479 (Fed. Cir. 1986).

Furthermore, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.

1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). [MPEP 2131]

Applicant, by this Amendment, submits new claim 24, which highlights a novel feature of applicant's invention: namely, a center connector and plurality of substantially flat angled sides which together provide the means for constructing a domical structure comprising a plurality of strutless modules, and wherein such construction can in courses from the top down by utilizing an overhead hoist to secure the structure as it is assembled. Claim 25 further limits the center connector as comprising a center connecting bolt, a center connecting washer positioned over the center connecting bolt, wherein the center connecting bolt depends downwardly from the interior surface of the module when the module is laid flat on its lower edge. Support for the limitation of the module having substantially flat angled sides may be found in the specification at page 8, lines 21-22, and in the drawings, 1B, 2B, and 3.

As set forth in the specification, page 4 line 14 page 5 line 8, and again at page 10 line 11 through page 12 line 18, the center connector plays a unique role in the production of a dome structure constructed from the inventive modules. Specifically, an overhead hoist is erected (either boomless, as described in the specification, or utilizing a boom, as would be known in the art). An array of modules is positioned generally in a circle and each of the modules is connected at their sides to form the uppermost section of the dome, excluding the topmost module. The modules thus connected form an upper course. Connection cables are then assembled and the end of each cable is connected to one of the center connectors of the assembled modules. The connection cables are connected at their respective upper ends, and a winch is positively operated to elevate

the uppermost dome course of modules above the ground. The first elevated lift or course is illustrated in Fig. 6. Construction continues in courses, or lifts, and the elevated first course enables workers to work from the top of the dome down; that is, they are able to connect one module after another to the lower sides of assembled first course of modules. The lifts are repeated until the dome is constructed.

The inventive module is novel in having means for assembling a dome in courses using a hoist. The means, i.e., a center connector, is unique and pivotal in enabling this construction method. Without the balanced means for connecting the inventive modules to a common hoist, the course could not be evenly lifted in the manner described.

None of the references cited in the outstanding Office Action address or facilitate this construction method, nor do they contain the means for constructing a dome in courses (as in new claim 24). Moreover, several of the references teach discrete covers, rather than modules adapted for assembly into a dome structure.

The Examiner has indicated that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The Examiner then contends that the means of the references (Mellot, Petty, Preissler, or Dubinski) can certainly be adapted to function as claimed. While this is asserted, there is no indication of the basis for the assertion.

Applicant respectfully disagrees with the Examiner's contention. Mellott teaches a shelter structure having a center bolt for sandwiching and securing the tubes and roof sections comprising the structure. The bolt does not function as a center connector for assembling a plurality of the disclosed structure in courses. Furthermore, Mellott does not include substantially flat angled

sides suitable for connecting a plurality of modules into a dome structure. The tubes constituting the sides of the structure are adapted only for joining the structures together for support by a plurality of vertical posts. Furthermore, there is no suggestion or teaching in Mellot or in any of the other references to modify the disclosed structure to adapt it for assembly into a domical structure. Mellot cannot be erected as a dome, but only as a generally level overhead structure which requires a plurality of upright supports in order to stand (see Figs. 8-9). The sides of Mellot comprise tubing (22) at the perimeter of the roof sections (28) [see Fig. 2, and col. 3, lines 55-60] which can be fitted with bolts for connection to other roof structures. There is no angle at the sides of the roof structure of Mellot to provide a support function, as provided in new claim 24, nor are the sides flat.

Likewise, Petty discloses a outdoor grain pit cover suited only for use as a standalone unit. Petty does not teach or disclose any means for utilizing the structure taught for assembling a dome in courses, or even for connecting the covers into an assembly of any type. Nor does Petty teach a module having substantially flat angled sides suited for connecting one module to an adjoining module. This is especially true of Dubinsky and Felman, each of which show only an umbrella, having no means whatsoever for connecting units into an assembly.

Preissler discloses a polygonal building structure, but the structure is constructed of a number of different components. There is not disclosed in Preissler a single module which when assembled comprises a dome structure. Again, Preissler does not teach every element of the instant invention, most notably including a module having angled sides or a center connector for assembling a dome structure in courses.

For the foregoing reasons, it is respectfully submitted that the foregoing references do not anticipate the instant invention as newly claimed and that the rejections under 35 U.S.C. 102(b) are moot in view of the newly submitted claims.

Response to Rejections Based on 35 U.S.C. § 103(a)

The examiner has indicated that claim 19 is rejected under 35 U.S.C. 103(a) as unpatentable over Mellott, and that claim 23 is rejected under 35 U.S.C. 103(a) as unpatentable over Dubinsky in view of Feldman, inasmuch as Dubinsky shows all the claimed limitations except for the disc being made from polarized transparent material, and Feldman shows a disc being made from polarized material.

"In determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination, or other modification." *In re Linter*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). [MPEP 2143.01]

None of the above-indicated references, alone or in combination, teaches or suggests, nor includes any suggestion or motivation to modify the references, to produce the instant invention as claimed in new claim 24, and claims depending therefrom. Specifically, as noted in the section addressing Section 102(b) rejections, none of the references teach or suggest a module adapted for construction into a domical structure, including substantially flat angled sides and a center connector, which collectively allow construction in courses from the top down utilizing an

overhead hoist. Accordingly, it is respectfully submitted that the rejections under 35 U.S.C. 103(a) are moot and that the pending claims are in condition for allowance.

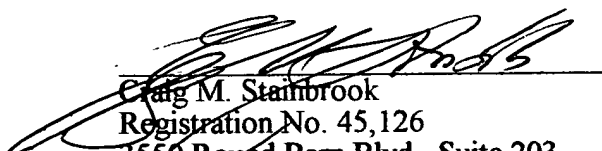
Notice of Allowability.

Conclusion

In view of these amendments and comments it is respectfully submitted that all pending claims are in condition for allowance, and such allowance is respectfully requested. The Examiner is invited to call Applicant's undersigned attorney if, in the opinion of the Examiner, a telephone conference will in any way expedite prosecution of this application.

Respectfully Submitted,

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